

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 GREGORY TUSS
Deputy Attorney General
4 State Bar Number 200659
1515 Clay Street, 20th Floor
5 Post Office Box 70550
Oakland, California 94612-0550
6 Telephone: (510) 622-2143
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case Number **2013-103**

12 **JEFFREY JOHN KAY**
Post Office Box 9083
13 Eureka, California 95502-9083

A C C U S A T I O N

14 **Registered Nurse License Number 564114**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Complainant Louise R. Bailey, M.Ed., R.N., brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing (Board),
21 Department of Consumer Affairs.

22 2. On or about February 23, 2000, the Board issued Registered Nurse License Number
23 564114 to Respondent Jeffrey John Kay. This registered nurse license was in full force and effect
24 at all times relevant to the charges brought in this Accusation and will expire on July 31, 2013,
25 unless renewed.

26 **JURISDICTION**

27 3 This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 118, subdivision (b), provides:

2 “The suspension, expiration, or forfeiture by operation of law of a license issued by a board
3 in the department, or its suspension, forfeiture, or cancellation by order of the board or by order
4 of a court of law, or its surrender without the written consent of the board, shall not, during any
5 period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
6 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
7 provided by law or to enter an order suspending or revoking the license or otherwise taking
8 disciplinary action against the licensee on any such ground.”

9 5. Section 2750 provides:

10 “Every certificate holder or licensee, including licensees holding temporary licenses, or
11 licensees holding licenses placed in an inactive status, may be disciplined as provided in this
12 article [Article 3 of the Nursing Practice Act (Bus. & Prof. Code, § 2700 et seq.)]. As used in this
13 article, ‘license’ includes certificate, registration, or any other authorization to engage in practice
14 regulated by this chapter. The proceedings under this article shall be conducted in accordance
15 with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
16 Government Code [the Administrative Procedure Act], and the board shall have all the powers
17 granted therein.”

18 6. Section 2764 provides:

19 “The lapsing or suspension of a license by operation of law or by order or decision of the
20 board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the
21 board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding
22 against such license, or to render a decision suspending or revoking such license.”

23 **STATUTORY PROVISIONS**

24 7. Section 2761 provides, in pertinent part:

25 “The board may take disciplinary action against a certified or licensed nurse or deny an
26 application for a certificate or license for any of the following:

27 “(a) Unprofessional conduct, which includes, but is not limited to, the following:

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1 “(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing
2 functions.”

3 8. California Code of Regulations, title 16, section 1442, provides:

4 “As used in Section 2761 of the code, ‘gross negligence’ includes an extreme departure
5 from the standard of care which, under similar circumstances, would have ordinarily been
6 exercised by a competent registered nurse. Such an extreme departure means the repeated failure
7 to provide nursing care as required or failure to provide care or to exercise ordinary precaution in
8 a single situation which the nurse knew, or should have known, could have jeopardized the
9 client's health or life.”

10 9. California Code of Regulations, title 16, section 1443, provides:

11 “As used in Section 2761 of the code, ‘incompetence’ means the lack of possession of or
12 the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and
13 exercised by a competent registered nurse as described in Section 1443.5.”

14 10. California Code of Regulations, title 16, section 1443.5, provides:

15 “A registered nurse shall be considered to be competent when he/she consistently
16 demonstrates the ability to transfer scientific knowledge from social, biological and physical
17 sciences in applying the nursing process, as follows:

18 “(1) Formulates a nursing diagnosis through observation of the client's physical condition
19 and behavior, and through interpretation of information obtained from the client and others,
20 including the health team.

21 “(2) Formulates a care plan, in collaboration with the client, which ensures that direct and
22 indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and
23 for disease prevention and restorative measures.

24 “(3) Performs skills essential to the kind of nursing action to be taken, explains the health
25 treatment to the client and family and teaches the client and family how to care for the client's
26 health needs.

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“(4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.

“(5) Evaluates the effectiveness of the care plan through observation of the client’s physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

“(6) Acts as the client’s advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided.”

COST RECOVERY

11. Section 125.3, subdivision (a), provides:

“Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board upon request of the entity bringing the proceedings, the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.”

DRUGS AND MEDICAL TERMS

12. "Fentanyl" is a narcotic (opioid) analgesic and is used for producing anesthesia for surgery and treating pain before, during, and after surgery. It is physically and psychologically addictive. Fentanyl is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (c)(8), and is a dangerous drug within the meaning of Business and Professions Code section 4022.

13. "Propofol" ("Diprivan") is a short-acting, intravenously administered hypnotic agent. Its uses include the induction and maintenance of general anesthesia, sedation for mechanically ventilated adults, and procedural sedation. It is a dangerous drug within the meaning of Business and Professions Code section 4022.

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1 14. "Dilaudid" ("hydromorphone") is in a group of drugs called narcotic pain relievers, or
2 opioids, and is similar to morphine. It is used to treat moderate to severe pain. Dilaudid is a
3 Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision
4 (b)(1)(J), and is a dangerous drug within the meaning of Business and Professions Code section
5 4022.

6 15. "Vicodin" is a combination of a narcotic analgesic (hydrocodone) and a non-narcotic
7 analgesic (acetaminophen) used for the relief of moderate to moderately severe pain. Vicodin is a
8 Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision
9 (b)(1)(I), or a Schedule III controlled substance pursuant to Health and Safety Code section
10 11056, subdivision (e)(4), based on the amount of hydrocodone contained. Vicodin is a
11 dangerous drug pursuant to Business and Professions Code section 4022.

12 16. "RASS" is the "Richmond Agitation and Sedation Scale" and is used to measure a
13 patient's sedation level. A score of "-4" is deep sedation: no response to voice, but any
14 movement in response to physical stimulation. A score of "-3" is moderate sedation: any
15 movement, except eye contact, in response to command.

16 **FACTUAL BACKGROUND**

17 17. On or about October 15, 2000, Respondent began employment as a registered nurse
18 with St. Joseph's Hospital in Eureka, California.

19 18. a. A physician's order set to begin on or about June 11, 2009, for Patient V¹ called
20 for Fentanyl 10-25 mcg intravenous every 15 minutes times three doses as needed for pain while
21 intubated.

22 b. Patient V was administered Fentanyl on or about June 12, 2009, at 11:30 a.m.
23 and 1:10 p.m. Respondent himself gave Fentanyl to Patient V on or about June 12 at 8:00 p.m.,
24 8:35 p.m., 9:00 p.m., 10:00 p.m., and 11:00 p.m., and on or about June 13, 2009, at 12:00 a.m.
25 Additionally, Respondent administered 40 mcg of Fentanyl on or about June 13, 2009, at 1:00
26 a.m.

27
28 ¹ The patient's name will be released pursuant to a discovery request.

1 19. a. A physician's order set to begin on or about June 11, 2012, for Patient V called
2 for Propofol (Diprivan) 27-75 mcg/kg/min intravenous titrate to RASS score -3; when patient is
3 stable and ready to begin weaning process, wean infusion to off over 30 minutes.

4 b. When Respondent began his shift at approximately 7:00 p.m. on or about June
5 11, 2009, Patient V had been receiving 80 mcg/kg/min Propofol and her RASS score at the time
6 was -4. At 7:00 p.m., Respondent gave Patient V 80 mcg/kg/min Propofol and recorded her
7 RASS score as -4. At 7:30 p.m., Respondent gave Patient V 65 mcg/kg/min Propofol and
8 recorded her RASS score as -4. At 8:00 p.m., Respondent gave Patient V 65 mcg/kg/min
9 Propofol and recorded her RASS score as -4. At 8:30 p.m., Respondent gave Patient V 65
10 mcg/kg/min Propofol and recorded her RASS score as -4. At 9:00 p.m., Respondent gave Patient
11 V 65 mcg/kg/min Propofol and recorded her RASS score as -4. At 10:00 p.m., Respondent gave
12 Patient V 60 mcg/kg/min Propofol and recorded her RASS score as -4. At 11:00 p.m.,
13 Respondent gave Patient V 55 mcg/kg/min Propofol and recorded her RASS score as -4. On or
14 about June 12, 2009, at 12:00 a.m., Respondent gave Patient V 50 mcg/kg/min Propofol and
15 recorded her RASS score as -3.

16 20. a. A physician's order set to begin on or about June 11, 2009, for Patient V called
17 for Dilaudid 1-2 mg intravenous every 2-4 hours as needed.

18 b. On or about June 13, 2009, Respondent gave Patient V 2 mg Dilaudid at 2:00
19 a.m. and again at 3:00 a.m.

20 21. On or about June 14, 2009, Respondent gave Patient V 2 tablets Vicodin at 12:00
21 a.m. and again at 4:00 a.m. Although Respondent charted both administrations on the flowsheet,
22 he did not chart them on the Medication Administration Record.

23 **FIRST CAUSE FOR DISCIPLINE**
24 **Unprofessional Conduct: Gross Negligence**
(Bus. & Prof. Code, §§ 2761, subds. (a) & (a)(1))

25 22. The allegations of paragraphs 17-21 are realleged and incorporated by reference as if
26 fully set forth.

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23. Respondent has subjected his license to disciplinary action for unprofessional conduct under section 2761, subdivision (a), as defined by subdivision (a)(1) (gross negligence) and California Code of Regulations, title 16, section 1442. As set forth in paragraphs 17-21 above, Respondent was grossly negligent and manifested an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse by acts which include, but are not limited to, the following:

- Administering 40 mcg Fentanyl to Patient V on or about June 13, 2009, in excess of the physician's order of 10-25 mcg;
- Administering approximately six doses of Fentanyl to Patient V on or about June 12-13, 2009, without a valid physician's order;
- Administering 80 mcg/kg/min Propofol to Patient V on or about June 11, 2009, in excess of the physician's order of 25-75 mcg/kg/min;
- Administering Propofol to Patient V on or about June 11, 2009, which caused Patient V to exceed the level of sedation ordered by the physician for five hours;
- Administering two doses of Dilaudid one hour apart to Patient V on or about June 13, 2009, in excess of the physician's order of every 2-4 hours;
- Failing to document two administrations of two tablets of Vicodin on or about June 14, 2009, on the Medication Administration Record.

SECOND CAUSE FOR DISCIPLINE
Unprofessional Conduct: Incompetence
(Bus. & Prof. Code, § 2761, subs. (a) & (a)(1))

24. The allegations of paragraphs 17-21 are realleged and incorporated by reference as if fully set forth.

25. Respondent has subjected his license to disciplinary action for the unprofessional conduct under section 2761, subdivision (a), as defined by subdivision (a)(1) (incompetence) and California Code of Regulations, title 16, section 1443. As set forth in paragraphs 17-21 above, Respondent was incompetent and failed to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse by acts which include, but are not limited to, the following:

- Administering 40 mcg Fentanyl to Patient V on or about June 13, 2009, in excess of the physician's order of 10-25 mcg;
- Administering approximately six doses of Fentanyl to Patient V on or about June 12-13, 2009, without a valid physician's order;
- Administering 80 mcg/kg/min Propofol to Patient V on or about June 11, 2009, in excess of the physician's order of 25-75 mcg/kg/min;
- Administering Propofol to Patient V on or about June 11, 2009, which caused Patient V to exceed the level of sedation ordered by the physician for five hours;
- Administering two doses of Dilaudid one hour apart to Patient V on or about June 13, 2009, in excess of the physician's order of every 2-4 hours;
- Failing to document two administrations of two tablets of Vicodin on or about June 14, 2009, on the Medication Administration Record.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 564114 issued to Jeffrey John Kay;
2. Ordering Jeffrey John Kay to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: August 8, 2012

Louise R. Bailey
LOUISE R. BAILEY, M.Ed., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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